Appendix A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-2695
Non-Argument Calendar

D.C. Docket No. 97-00348-CV-J-20C

MARY ELEIZABETH HIGTOWER,

Plaintiff-Appellant,

versus

CONTINENTAL CABLEVISION OF JACKSONVILLE,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(March 5, 2001)

BEFORE: MARCUS and HILL, Circuit Judges and FERGUSON*, District Judge.

*Honorable Wilkie D. Ferguson, Jr., U.S. District Judge for the Southern District of Florida, sitting by designation.

PER CURIAM:

This appeal is brought from the district court's grant of summary judgment in favor of the employer. The district court found that the plaintiff failed to present a *prima facie* case under the Americans with Disabilities Act, 42 U.S.C §

12101 *et seq.* ("ADA"), because (1) the plaintiff's requested accommodation, retaining full fringe benefits while working part-time, was not reasonable; and (2) the defendant's offered accommodation, a part-time position, was reasonable. We affirm.

I. BACKGROUND

On April 19, 1993 Mary Hightower ("Hightower"), the plaintiff, was hired by Continental Cablevision of Jacksonville, Inc. ("Continental"), the defendant, as a sales representative. In April of 1994 she was diagnosed with Multiple Sclerosis and Continental was promptly informed. In 1995 Hightower's position as a sales representative was eliminated and she was transferred to the position of customer service representative. Her new job responsibilities included answering customer telephone inquiries regarding sales, service and billing.

Throughout her course of treatment Hightower's physician, Dr Hartley, communicated with Continental several times. In an August 16, 1994 note he stated "[s]he has recently been diagnosed as having Multiple Sclerosis. At this time the disease is producing relatively mild symptoms although she does have chronic, daily headaches. She also reports some side effects from her medication. At times she may have to miss work because of these conditions."

As predicted by Dr. Hartley, Hightower began to miss work because of the effects of the disease. Once again, on February 12, 1996, the physician wrote to Continental's Manager of Human Resources describing Hightower's impairment and advising Continental of her conditional ability to continue employment:

[Hightower] can return to her job and assume normal

> duties, although sometimes she may experience severe headaches and chronic fatigue and may have to miss some work. Her jobs consists of mainly sitting, telephone work, occasionally working within the department. She cannot on a continuous basis climb up and down stairs, [perform] excessive walking or heavy lifting, dust or fumes.... She would like to continue to work her job hut must have some reasonable accommodations from her job.

In another letter Dr. Hartley gave an opinion of a reasonable accommodation stating "[i]t would be helpful if she could be reassigned to a part-time position."

After Hightower missed a week of work in April of 1996, she was counseled by Continental. She responded with a request for an accommodation of a five-day week, six-hour day work schedule (i.e, 30 hours per week) which, she contends, would permit her to retain full-time employment status without a loss of benefits. Continental offered, instead, a 25-29 hour part-time position and further asserted that no full-lime thirty (30) hour position with full benefits existed. Hightower testified that Continental, by terms of its employee handbook, provides benefits in regular part-time employees on a prorated basis. Continental, contended, and Hightower did not dispute, that the offer of part-time employment included the value of the reduced benefits. Continental further argued that Hightower was not seeking benefits but instead wanted "extra cash" because her compensation included the value of fringe benefits. The arrangement was pursuant to her request as she already had health care coverage under her husband's employment package.

Continental's management personnel admitted that immediate supervisors have the discretion to schedule

employees for work weeks from as little as ten (10) hours up to thirty (30) hours and that there are over seventeen (17) different shifts in the operations. Hightower has presented no evidence, however, that employees who work less than forty-hours are provided full health care benefits. She admitted that she was unaware of the existence of a part-time position which paid full-time benefits,

By a note dated July 8, 1996, found in Hightower's personnel file, Dr. Hartley informed Continental that his patient was scheduled for an MRI on Friday afternoon, July 12, 1996. On the following Monday morning, July 15, 1996, Continental placed Hightower on a "mandatory development" warning for a period of thirty days because of excessive absences from work. She wrote Continental apologizing for the absences which were necessitated by her impairment, and pleading for accommodations which would "help in [her] attendance" and allow her to remain functional at work.

On September 3, 1996, Hightower called in sick to her immediate supervisor. On or about September 17, 1996, Susan Richards, Continental's Manager of Human Resources, met with Hightower and asked her to sign a release of her ADA claim in return for three (3) weeks pay and six (6) months of current health insurance premiums. Hightower refused Continental's offer of a part-time position and would not sign the release. She was terminated two (2) days later.

On appeal, Hightower contends that (1) the part-time position offered as an accommodation for her disability, which excluded fringe benefits, was unreasonable under the Act and (2) occasional absences from her clerical position caused by a disability for which she sought a reasonable accommodation did not render her unqualified for the

position. It is also contended in this appeal that Continental's termination of Hightower's employment was in retaliation for her refusal to execute a release of her ADA claim in exchange for a payment of cash equal to the value of six (6) months of fringe benefits.

II. DISCUSSION

Standard of Review

This court reviews a district court's decision to grant summary judgment *de novo*, "construing all evidence in the light most favorable to the non-moving party." Leigh v. Warner Bros., Inc., 212 F.3d 1210, 1214 (11th Cir. 2000). "Summary judgment is only proper when there are no genuine issues of material fact." Id. "An issue of fact is material and genuine if a rational fact finder could find for the nonmoving party on a fact necessary to establish an element of the claim under applicable substantive law." Ross Neely Sys., Inc. v. Occidental Fire.& Cas. Co. of N.C., 196 F.3d 1347. 1350 (11th Cir. 1999)(citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242. 248 (1986)). The movant bears the initial burden of showing the absence of a genuine issue as to any material fact. See Celotex Corp. v. Catrett, 477 US. 317, 323 (1996).

Plaintiffs *Prima Facie* Case

Under the ADAA *prima facie* case of employment discrimination under the ADA is established on a showing that the plaintiff (1) has a disability; (2) is qualified, with or without reasonable accommodations, to perform the essential functions of her job; (3) identified a reasonable accommodation to the employer; and (4) was unlawfully discriminated against because of her disability. See Willis v. Conopco, Inc., 108 F.3d 282, 283 (11th Cir. 1997).

Once a plaintiff establishes her prima *facie* case, the defendant's burden on rebuttal is to produce a legitimate, non-discriminatory reason for the challenged employment decision. See McDonnell Douglass Corp. v. Green, 93 S.Ct. 1817 (1973). This burden is merely one of production, not persuasion, and is exceedingly light. See Texas Dep't of Community Affairs v. Burdine, 101 S. Ct. 1089, 1093 (1981). If the defendant satisfies this burden of production the plaintiff must establish, in order to prevail upon her claim, both that the proffered reason for the employment decision was false and that the real reason underlying the action was discriminatory in nature. See St. Mary's Honor Ctr. v. Hicks, 113 S.Ct. 2742, 2751-52 (1993).

For the purpose of this appeal Continental concedes that Hightower has a disability. We conclude further that Hightower has presented sufficient evidence to preclude summary judgment against her on the question of whether she could, with reasonable accommodations, perform the essential requirements of the job and is therefore a qualified individual. The dispositive question is whether, on the undisputed facts, the employer's offer of part-time employment without additional compensation equal to the value of full fringe benefits was unreasonable.

Reasonable Accommodations

Under the ADA employers must provide reasonable accommodations which enable disabled employees to perform the essential requirements of their jobs. See Willis, 108 F.3d at 283. A reasonable accommodation includes:

> (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
> (B) job restructuring, *part-time or modified*

> *work schedules*, reassignment to a vacant position, acquisition or modification of equipment or devices,...and other similar accommodation for individuals with disabilities.

42 U.SC. § 12111(9) (emphasis added).

An employer may be liable for "not making reasonable accommodations to known physical or mental limitations of an otherwise qualified individual with a disability." Schwertfager v. City of Boynton Beach, 42 F.Supp. 2d 1347, 1363 (SD. Fla. 1999)(citing 42 U.S.C. § 12112(b)(5)(A)); see also Morisky v. Broward County, 80 F.3d 445, 447 (11th Cir. 1996). "The burden of identifying an accommodation that would allow a qualified individual to perform the job rests with that individual, as does the ultimate burden of persuasion with respect to demonstrating that such an accommodation is reasonable." Stewart v Happy Herman's Chesire Bridge, Inc., 117 F.3d 1278, 1286 (11th Cir. 1997). If the plaintiff fails to prove that the requested accommodation is reasonable, she fails to satisfy her *prima facie* case, and "on this basis, alone, the [defendant] is entitled to summary judgment." Quick v. Tripp, Scott, Conklin & Smith, P.A., 43 F.Supp. 2d 1357, 1369 (S.D Fla. 1999).

"The use of the word 'reasonable' as an adjective for the word 'accommodate' connotes that an employer is not required to accommodate an employee in any manner in which the employee desires." Earl v. Mervyns. Inc. 207 F.3d 1361, 1367 (11th Cir. 2000); see also Mont-Ross, 111 F.Supp. 2d 1338, 1358 (S.D. Fla. 2000) (citing Schwertfager, 42 F.Supp. 2d at 1363) ("An employee is not entitled to [his] preferred accommodation, only one that is reasonable.")

In Terrell v. USAir, 132 F.3d 621 (11th Cir. 1998), the plaintiff, a reservations sales agent, suffered from carpal tunnel syndrome. As an accommodation she requested a reduced work schedule varying from four to six hour days. Under the defendant-employer's salary continuance program, which paid the difference between worker's compensation benefits and the employee's full-time salary, the plaintiff continued to receive her full-time salary while she took a medical leave of absence to convalesce from surgery. Once the plaintiff resumed working, however, she was compensated only for the part-time hours actually worked. The plaintiff was placed on unpaid medical leave after she exceeded the defendant's sixty-day limit allowing injured employees to work reduced schedules (e.g., fewer hours than the employee's scheduled shift).

In an ADA lawsuit filed against her employer the plaintiff alleged that the defendant failed to reasonably accommodate her when it placed her on unpaid medical leave instead of continuing her part-time status. This Court affirmed the district court's holding that employers do not have a duty to place disabled employees in part-time positions where none exist and that there is no duty to create such positions. See id. at 625.

In Duckctt v. Dunlop Tire Co., 120 F.3d 1222 (11th Cir. 1997), a case factually similar to Terrell, a Section Manager missed several months from work after being diagnosed with elevated high blood pressure. During his absence the employer enrolled him in its salary continuation program which provided for maximum benefits for a period of up to twenty-four (24) weeks and lesser benefits for a period of twenty-eight (28) weeks. The employee was terminated approximately five (5) months later, while still in the salary continuation program, after several of his treating

physicians opined that he still could not function as Section Manager due to his disability.

The employee brought an ADA claim against his employer asserting that the employer failed to reasonably accommodate him under the Act because he was terminated with two (2) months of benefits remaining under the employer's salary continuation program. This Court affirmed the grant of summary judgment in favor of the employer and stated "[t]hat [d]efendant, as a matter of business policy, chose to create its Salary Continuation Plan does not establish that it was required to allow [p]laintiff to receive benefits under the plan-for an entire year-as a reasonable accommodation under the ADA." Duckett, 120 F.3d at 1225.

While part-time employment is frequently used to accommodate the special needs of disabled employees, in Duckett this Court rejected the notion that employees are entitled to be enrolled in their employers' fringe benefits programs as an ADA accommodation. There is no legal support for Hightower's contention that, as a part-time employee she was entitled to the same fringe benefits given to full-time employees.

The accommodation offered, a reduced work schedule of 25-29 hours per week, was reasonable. The ADA, 42 U.S.C. § 12111(9)), provides that "part-time or modified work schedules" are reasonable accommodations, exactly what Hightower's physician opined would be reasonable. The accommodation requested by Hightower, extra compensation equal to the value of full fringe benefits while working reduced hours, was not reasonable.

III. CONCLUSION

The part-time position offered by Continental, and rejected by Hightower, was a reasonable accommodation. Hightower's requested accommodation was not. For these reasons, she failed to present a *prima facie* case of ADA discrimination. Summary judgment for the employer is **AFFIRMED**.[1]

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT
MAR 05 2001
THOMAS K. KAHN CLERK

[1] Because Hightower failed to establish a *prima facie* case of ADA discrimination the burden never shifted to Continental to articulate a legitimate, non-discriminatory reason for its employment decisions. See McDonnell Douglass Corp. v. Green, 93 S.Ct. 1817 (1973). Nevertheless it is undisputed that the plaintiff was absent excessively because of a disability. It is also unnecessary to address Hightower's retaliation claim because she failed to establish a *prima facie* case of retaliation, i.e., a causal relationship between protected expression (i.e. request for ADA accommodations) and the adverse employment action. See Holifield v. Reno, 115 F.3d 1555,1566 (11th Cir. 1997).

Appendix B

UNITED STATES DISTICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MARY ELEIZABETH HIGHTOWER,

Plaintiff,

v. Case No.: 97-348-CIV-J-20C

CONTINENTAL CABLEVISION
OF JACKSONVILLE, INC.,

Defendant.

ORDER

Before the Court are Plaintiff's Motion for Partial Summary Judgment (Doc. No. 20, filed January 12. 1998), to which Defendant responded on January 29, 1998, see Doc. No. 33, and Defendant's Motion for Summary Judgment (Doc. No. 33, filed January 29, 1998), to which Plaintiff responded on February 9, 1998. See Doc. No. 43. Thereafter Defendant filed its Motion for Leave to Reply to Plaintiff's Response (Doc. No. 51, filed March 3, 1998), to which Plaintiff responded on March 17, 1998. See Doc. No. 55. Defendant's Motion For Leave (Doc. No. 51) is **DENIED.**

In her two count Complaint, Plaintiff alleges that Defendant violated the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.A. § 12101 et seq., by terminating her employment as a result of her disability and failing to provide her with a reasonable accommodation. Plaintiff further alleges that Defendant retaliated against her as a result of her request for reasonable accommodations by terminating

her and by opposing her request for unemployment compensation.

DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial burden of showing the Court, by reference to materials on file that there are no genuine issues of material fact that should be decided at trial. Clark v. Coats & Clark. Inc., 929 F.2d 604, 608 (11th Cir. 1991). When a moving party has discharged its burden, the nonmoving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing that there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

In determining whether the moving party has met its burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, the Court must draw inferences from the evidence in the light most favorable to the nonmovant, Key West Harbor v. City of Key West, 987 F.2d 723, 726 (11th Cir. 1993), and resolve all reasonable doubts in that party's favor. Spence v. Zimmerman, 873 F.2d 256, 257 (11th Cir. 1989).

Thus, if a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact, then the court should not grant the summary judgment motion. Augusta Iron and Steel Works v. Employers Insurance of Wausau, 835 F.2d 855, 856 (11th Cir 1988). It

must be emphasized that the mere existence of some alleged factual dispute will not defeat an otherwise properly supported summary judgment motion. Rather, "the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute about a material fact is "genuine" if the "evidence is such that a reasonable jury could return a verdict for the nonmoving parry." Id. at 248. The inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52.

Defendant argues that Plaintiff cannot establish a violation of the ADA because she has presented no direct evidence of discrimination and cannot establish a prima facie case of discrimination. With respect to the latter argument, Defendant argues that Plaintiff is not disabled because her alleged disease was controlled by medication and she is not substantially limited in a major life activity. Defendant further argues that Plaintiff was excessively absent and, therefore, is not otherwise qualified for her position at Continental, and that Plaintiff has failed to show that Continental's articulated reason for discharge is pretextual. Defendant also seeks summary judgment on the ADA claim because it provided Plaintiff with several accommodations and. is not required to either create a position or provide her with her requested accommodation, particularly if such requested accommodation is unreasonable.

Having reviewed the affidavits and deposition transcripts submitted in support of Defendant's motion for summary judgment and the materials submitted in opposition to that motion, and having considered the parties' arguments, the Court concludes that Defendant is entitled to summary judgment in its favor. Turning first to her ADA claim, Plaintiff has not come forward with evidence sufficient to

raise a genuine issue for trial with respect to whether she can make a prima facie case under the ADA. "To state a prima facie case of disability discrimination, a plaintiff must show (1) that she has a disability; (2) that, with or without reasonable accommodations, she can perform the essential functions of the position she holds; and (3) that she was discriminated against because of her disability." Terrell v. USAir, 132 F.3d 621, 624 (11th Cir. 1998). Defendant has submitted evidence demonstrating that attendance is an essential function of the customer service representative's job, see Affidavit of Gloria Davis (attached to Defendant's Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment ("Defendant's Memorandum") (Doc. No. 34, filed January 29, 1998) as Exhibit 1)[2] at ¶ 3; Defendant has also submitted evidence establishing that Plaintiff was reprimanded on several occasions for her absenteeism. See Deposition Transcript of Plaintiff Mary Elizabeth Hightower ("Plaintiff's Tr.") (Doc. No. 26, filed January 12, 1998) at pp. 135, 168-173; Pl. Tr., Def's. Exh. 10. Numerous cases stand for the proposition that when attendance is an essential function of a job, and when the employee's attendance is unreliable and/or sporadic, that employee cannot subsequently prevail on a claim under the

---

[2] It is irrelevant that Davis' "Affidavit" was not notarized, as this statement was properly made in accordance with 28 U.S.C. § 1746. See 28 U.S.C. § 1746; United States v. Four Parcels of Real Property in Greene and Tuscaloosa Counties in State of Alabama, 941 F.2d 1428, 1444 n. 36 (11th Cir. 1991); Lewis v. Zilog, Inc, 908 F. Supp. 931, 958-59 (N.D. Ga. 1995); Carter v. Clark, 616 F.2d 228 (5th Cir. 1980) (striking down local rule which required that all pleadings of prison inmates be notarized because such rule was in conflict with section 1746); Duncan v. Foti, 828 F.2d 297, 297 (5th Cir. 1987) ("28 U.S.C. § 1746 provides an alternative to notarization").

ADA because she is not an otherwise qualified individual. See Jackson v. Veterans Affairs, 22 F.3d 277, 279 (11th Cir.), cert. dismissed, 513 U.S. 1052 (1994); Halperin v. Abacus Technology Corp, 128 F.3d 191, 197-98 (4th Cir. 1997); Bultemeyer v Fort Wayne Community Schools, 100 F.3d 1281, 1284 (7th Cir. 1996); Martinez v. Lennox International, Inc., 1997 WL 209306, *4 (N.D. Tex. Apr. 18, 1997); Tyndall v. National Education Center, 31 F.3d 209, 213-14 (4th Cir. 1996); Defendant's Memorandum (Doc. No. 34) at p. 10 (citing additional cases). Plaintiff's arguments in response are unpersuasive. Plaintiff has submitted no evidence to show that attendance was not an essential function of her job or that she did not have an attendance problem. Further, on the record before the Court, a reasonable jury could not find Defendant's proffered reason to be a pretext.

In addition, the evidence is clear that Defendant did offer Plaintiff a reasonable accommodation when it offered her a part time position. Plaintiff's argument that the position is not a reasonable accommodation because she would not have received full time benefits is without merit. See Willett v. State of Kansas, 942 F. Supp. 1387, 1395 (D. Kan. 1996), aff'd, 120 F.3d 272 (10th Cir. 1997); Pattison v. Meijer, Inc., 897 F. Supp. 1002, 1008 (W.D. Mich. 1995). There is no duty on the part of Defendant to create a position for Plaintiff. See Terrell, 132 F.3d at 626; Chiari v. City of League City, 920 F.2d 311, 318 (5th Cr. 1991). Once Defendant offered Plaintiff the reasonable accommodation of a part time job and it was rejected, Defendant discharged its duty to further accommodate Plaintiff and Plaintiff can not demonstrate that she was otherwise qualified. See, e.g., Schmidt v. Methodist Hospital of Indiana, Inc., 89 F.3d 342, 344-45 (7th Cir. 1996); Willet, 942 F.Supp. at 1395; cf.. 29 CF.R. § 1630.9(d) (stating that employee is no longer considered to be "a qualified individual with a disability" if

that employee refuses to accept a reasonable accommodation and thereafter cannot perform essential functions of the job). Accordingly, Defendant is entitled to judgment as a matter of law on Plaintiff's ADA claim.[3]

Defendant also argues that Plaintiff cannot establish a claim for retaliation in Count II. To prevail on a claim of retaliation, Plaintiff must establish that she was engaged in a statutorily protected activity, that the employer has taken an adverse employment action against her, and that a causal connection exists between the two. See Fleming v. Boeing Co., 120 F.3d 242, 248 (11th Cir. 1997). With respect to Plaintiff's claim that Defendant retaliated against her when it appealed her receipt of unemployment benefits, the Court agrees with United States District Judge Forrester of the Northern District of Georgia who held that a Defendant's opposition to unemployment benefits is not retaliatory in nature and not a basis for a Title VII retaliation claim. See Baker v. Summit Unlimited, Inc., 855 F. Supp. 375, 376 (N.D. Ga. 1994). Further, Plaintiff cannot make the argument that she was terminated for failure to sign a release. The offer of the release to Plaintiff was part of a severance package. Obviously Plaintiff was going to be leaving Defendant whether she accepted the severance package or not. Finally, Plaintiff has submitted no evidence that Defendant terminated her employment as a result of her request for reasonable accommodations. Rather, the unrebutted evidence -- as discussed above -- shows that Plaintiff was terminated because of her absenteeism. See Hairston v. Gainesville Sun Publishing Co., 9 F.3d 913, 919 (11th Cir. 1994) (burden of proof in retaliation cases under Title VII Is governed by the same framework as McDonnell Douglas Corp. v. Green, 411

---

[3] In light of this decision, the Court need not decide whether Plaintiff is disabled under the ADA.

U.S. 792 (1973); thus, even if Plaintiff makes a prima facie case, she must then come forward with evidence sufficient to show that Defendant's asserted reason for the termination is pretextual); Armstead v. City of St. Petersburg, 1997 WL 724420, at *5 (M.D. Fla.. Nov. 13, 1997). Accordingly, Defendant is entitled to judgment as to Count II of Plaintiff's Complaint as well.[4]

In accordance with the foregoing, it is **ORDERED AND ADJUDGED** that:

(1) Plaintiff's Motion for Partial Summary Judgment (Doc No. 20) is **DENIED**;

(2) Defendant's Motion for Summary Judgment (Doc. No. 33) is **GRANTED**;

(3) The Clerk shall enter judgment in favor of the Defendant and against the Plaintiff; and

(4) The Clerk is directed to close the file.

DONE AND ENTERED at Jacksonville, Florida this 2nd day of April, 1998.

/s/ Harvey E. Schlesinger
HARVEY E. SCHLESINGER
United States District Judge

Copies to:
Robert J. Winicki, Esq.
David L. Gordon, Esq.
Garry Randolph, Courtroom Deputy
Law Clerk

---

[4] In light of the foregoing, the Court need not reach the issues of front-pay or punitive damages.

Appendix C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-2695-FF

MARY ELEIZABETH HIGTOWER,

Plaintiff-Appellant,

versus

CONTINENTAL CABLEVISION OF JACKSONVILLE,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Florida

BEFORE: MARCUS and HILL, Circuit Judges and FERGUSON*, District Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellant is DENIED.

ENTERED FOR THE COURT:

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

*Honorable Wilkie D. Ferguson, Jr., U.S. District Judge for the Southern District of Florida, sitting by designation.

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT
APR 10 2001
THOMAS K. KAHN CLERK

Appendix D

UNITED STATES DISTICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MARY ELIZABETH HIGHTOWER,

Plaintiff,

JUDGMENT IN A CIVIL CASE

v. Case Number: 97-348-CIV-J-20C

CONTINENTAL CABLEVISION
OF JACKSONVILLE, INC,

Defendant.

X **Decision by Court.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's order entered on April 2, 1998, judgment is entered in favor of the Defendant, Continental Cablevision of Jacksonville, Inc., and against the Plaintiff, Mary Elizabeth Hightower.

Richard D. Sletten
Clerk

Date: April 2, 1998

/s/ Sharon Sholders
(By) Deputy Clerk